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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,984	08/22/2003	Tracey K. McManus		1594

22467 7590 06/24/2005

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EXAMINER

PARKER, FREDERICK JOHN

ART UNIT PAPER NUMBER

1762

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,984

Applicant(s)

MCMANUS ET AL.

Examiner

Frederick J. Parker

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11-24-03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of claims 1-10 in the reply filed on 6/6/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 10 is vague and indefinite because in the applying step, it is unclear which of the differently colored aggregate materials covers the applied adhesive.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1,2,6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalman US5817399 in view of Nagin et al US 3334555.

Kalman provides a method for manufacturing a two-color non-slip surfaces including cleaning (“preparing”) a metal plate, applying a bonding agent (“adhesive”) to the plate, to which is applied a plastisol including abrasive gritty particles of a first color; masking at least one edge, and applying a gritty plastisol of a second color (col. 2, 1-18). Masking is then removed. While it is not explicitly cited to apply a mask to the cleaned surface and removing a portion thereof prior to adhesive coating, it is the Examiner’s position that the order of steps of masking and removing a mask portion, applying adhesive and particles, would have been an obvious variation of Kalman, with the expectation of producing similar results (i.e. a multi-color non-skid surface),

Art Unit: 1762

absent a clear and convincing showing of unexpected results to the contrary. Aggregate materials, as opposed to a grit-containing plastisol, is not cited.

Nagin et al forms non-skid surfaces, e.g. on cleaned metal plates, in which a bonding agent of a 2-part epoxy resin (resin and curing agent), col. 4, 19-24, is applied and then before the resin cures, abrasive grains are applied thereon and pressed to form a non-skid layer. Since both references teach making non-skid surfaces, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kalman by substituting the non-skid plastisol layer of Kalman with the non-skid epoxy-particle layer of Nagin et al, and using plural colored aggregates, to provide plural colored non-skid surfaces to alert persons traveling thereon to discontinuities or other changes in elevation (Kalman col. 1, 18-27).

Both Kalman and Nagin teach travel paths in general, e.g. walkways, floors, ramps, highways, etc, which require non-skid surfaces, encompassing or reasonably suggesting the sidewalks, steps, etc of claim 2.

While removal of excess aggregate is not cited, it is the Examiner's position that the skilled artisan would have readily recognized removal of excess abrasive particles for reuse, absent a clear and convincing showing of unexpected results to the contrary.

The mask of Kalman is not limited, and would therefore be inclusive of that of claims 6 and 6.

8. Claims 3-5,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalman US5817399 in view of Nagin et al US 3334555 and further in view of Cambon US 4859522.

Kalman and Nagin et al are cited for the same reasons previously discussed, which are incorporated herein. Surface preparation using abrasion is not cited.

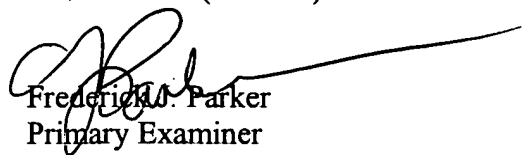
Art Unit: 1762

Cambon teaches forming multi-coat non-skid surfaces for floors, decks of ships, passageways, etc in which on col. 1, 39-49 it is taught to apply non-skid coatings to substrates treated by brushing, sanding, blasting, wash primer, etc to improve the adhesion of the applied coatings to the substrate. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kalman in view of Nagin et al by abrasion-treating the plates surfaces to be coated with non-skid coatings to provide greater adhesion of the coatings to the substrate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick J. Parker whose telephone number is 571/ 272-1426. The examiner can normally be reached on Mon-Thur. 6:15am -3:45pm, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571/272-1423. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Frederick J. Parker
Primary Examiner
Art Unit 1762

Application/Control Number: 10/646,984

Page 6

Art Unit: 1762

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